

petition to determine whether extenuating circumstances exist which warrant a change in employment, and whether the waiver granted under Pub. L. 103-416 should be affirmed. In conducting such a review, the Service shall determine whether the foreign medical graduate will continue practicing medicine in an HHS-designated shortage area, and whether the new H-1B petitioner and the foreign medical graduate have satisfied the remaining H-1B eligibility criteria described under section 101(a)(15)(H) of the Act and §214.2(h) of this chapter. If these criteria have been satisfied, the waiver granted to the foreign medical graduate under Pub. L. 103-416 may be affirmed, and the new H-1B petition may be approved in the exercise of discretion, thereby permitting the foreign medical graduate to serve the balance of the requisite 3-year employment period at the health care facility named in the new H-1B petition.

(D) *Failure to notify the Service of any material changes in employment.* Foreign medical graduates who have been granted a waiver of the 2-year requirement and who have obtained H-1B status under Pub. L. 103-416 but fail to: Properly notify the Service of any material change in the terms and conditions of their H-1B employment, by having their employer file an amended or a new H-1B petition in accordance with this section and §214.2(h) of this chapter; or establish continued eligibility for the waiver and H-1B status, shall (together with their dependents) again become subject to the 2-year requirement. Such foreign medical graduates and their accompanying H-4 dependents also become subject to deportation under section 241(a)(1)(C)(i) of the Act.

(10) The applicant and his or her spouse may be interviewed by an immigration officer in connection with the application and consultation may be had with the Director, United States Information Agency and the sponsor of any exchange program in which the applicant has been a participant.

(11) The applicant shall be notified of the decision, and if the application is denied, of the reasons therefor and of the right of appeal in accordance with the provisions of part 103 of this chap-

ter. However, no appeal shall lie from the denial of an application for lack of a favorable recommendation from the Secretary of State. When an interested United States Government agency requests a waiver of the two-year foreign-residence requirement and the Director, United States Information Agency had made a favorable recommendation, the interested agency shall be notified of the decision on its request and, if the request is denied, of the reasons thereof, and of the right of appeal. If the foreign country of the alien's nationality or last residence has furnished statement in writing that it has no objection to his/her being granted a waiver of the foreign residence requirement and the Director, United States Information Agency has made a favorable recommendation, the Director shall be notified of the decision and, if the foreign residence requirement is not waived, of the reasons therefor and of the foregoing right of appeal. However, this "no objection" provision is not applicable to the exchange visitor admitted to the United States on or after January 10, 1977 to receive graduate medical education or training, or who acquired such status on or after that date for such purpose; except that the alien who commenced a program before January 10, 1977 and who was readmitted to the United States on or after that date to continue participation in the same program, is eligible for the "no objection" waiver.

(Secs. 103, 203, 212 of the Immigration and Nationality Act, as amended by secs. 4, 5, 18 of Pub. L. 97-116, 95 Stat. 1611, 1620, (8 U.S.C. 1103, 1153, 1182)

[29 FR 12584, Sept. 4, 1964; 29 FR 13242, Sept. 24, 1964, as amended at 30 FR 14776, Nov. 30, 1965; 32 FR 2500, Feb. 7, 1967; 37 FR 22725, Oct. 31, 1972; 46 FR 45327, Sept. 11, 1981; 47 FR 44235, Oct. 7, 1982; 48 FR 20684, May 9, 1983; 48 FR 23159, May 24, 1983; 48 FR 30610, July 5, 1983; 49 FR 48530, Dec. 13, 1984; 53 FR 30017, Aug. 10, 1988; 60 FR 26681, May 18, 1995; 60 FR 27598, May 24, 1995; 62 FR 18508, Apr. 16, 1997]

§212.8 Certification requirement of section 212(a)(14).

(a) *General.* The certification requirement of section 212(a)(14) of the Act applies to aliens seeking admission to the United States or adjustment of status

under section 245 of the Act for the purpose of performing skilled or unskilled labor, who are preference immigrants as described in section 203(a) (3) or (6) of the Act, or who are non-preference immigrants as described in section 203(a)(8). The certification requirement shall not be applicable to a nonpreference applicant for admission to the United States or to a non-preference applicant for adjustment of status under section 245 who establishes that he will not perform skilled or unskilled labor. A native of the Western Hemisphere who established a priority date with a consular officer prior to January 1, 1977 and who was found to be entitled to an exemption from the labor certification requirement of section 212(a)(14) of the Act under the law in effect prior to January 1, 1977 as the parent, spouse or child of a United States citizen or lawful permanent resident alien shall continue to be exempt from that requirement for so long as the relationship upon which the exemption is based continues to exist.

(b) *Aliens not required to obtain labor certifications.* The following persons are not considered to be within the purview of section 212(a)(14) of the Act and do not require a labor certification: (1) A member of the Armed Forces of the United States; (2) a spouse or child accompanying or following to join his spouse or parent who either has a labor certification or is a nondependent alien who does not require such a certification; (3) a female alien who intends to marry a citizen or alien lawful permanent resident of the United States, who establishes satisfactorily that she does not intend to seek employment in the United States and whose fiancé has guaranteed her support; (4) an alien who establishes on Form I-526 that he has invested, or is actively in the process of investing, capital totaling at least \$40,000 in an enterprise in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States who are United States citizens or aliens lawfully admitted for permanent residence, ex-

clusive of the alien, his spouse and children. A copy of a document submitted in support of Form I-526 may be accepted though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted, if submittal is requested by the Service.

[31 FR 10021, July 23, 1966; 31 FR 10355, Aug. 22, 1966, as amended at 34 FR 5326, Mar. 18, 1969; 38 FR 31166, Nov. 12, 1973; 41 FR 37566, Sept. 7, 1976; 41 FR 55850, Dec. 23, 1976; 47 FR 44990, Oct. 13, 1982; 48 FR 19157, Apr. 28, 1983]

§ 212.9 Applicability of section 212(a)(32) to certain derivative third and sixth preference and non-preference immigrants.

A derivative beneficiary who is the spouse or child of a qualified third or sixth preference or nonpreference immigrant and who is also a graduate of a medical school as defined by section 101(a)(41) of the Act is not considered to be an alien who is coming to the United States principally to perform services as a member of the medical profession. Therefore, a derivative third or sixth preference or nonpreference immigrant under section 203(a)(8) of the Act, who is also a graduate of a medical school, is eligible for an immigrant visa or for adjustment of status under section 245 of the Act, whether or not such derivative immigrant has passed Parts I and II of the National Board of Medical Examiners Examination or equivalent examination.

(Secs. 103, 203(a)(8), and 212(a)(32), 8 U.S.C. 1103, 1153(a)(8), and 1182(a)(32))

[45 FR 63836, Sept. 26, 1980]

§ 212.10 Section 212(k) waiver.

Any applicant for admission who is in possession of an immigrant visa, and who is excludable under sections 212(a)(14), (20), or (21) of the Act, may apply to the district director at the port of entry for a waiver under section 212(k) of the Act. If the application for waiver is denied by the district director, the application may be renewed in